

REMARKS

In the Final Office Action mailed February 7, 2008, claims 1-21, 23-39 and 55-58 were pending. Claims 3-7, 23 and 24 were withdrawn from consideration, and claims 1, 2, 8-21, 25-39 and 55-58 were finally rejected. Since the Final Office Action fails to establish a prima facie case for rejecting several of the claims, reconsideration of the present application including claims 1-21, 23-39 and 55-58 is respectfully requested.

Claims 1, 2, 8-21, 25-39 and 55-58 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 2,699,774 to Livingston. In responding to applicant's previous arguments, the examiner asserts that amended claim 1 still read on Livingston "since, in a fully expanded state, the device comprises a curved configuration forming an arc along a length of the device, wherein the arc and longitudinal axis are co-linear." The examiner also asserts that "in a collapsed state (e.g. partially collapsed or not completely expanded) the device comprises a curved configuration forming an arc along the length of the device. It is noted that the claims do not require that the device be completely collapsed."

Claim 1 recites "said stabilization device further maintaining said curved configuration when in a collapsed insertion configuration and an expanded engagement configuration, wherein said curved configuration forms an arc along a length of said stabilization device and said arc and said longitudinal axis are co-linear in each of said collapsed insertion configuration and said expanded engagement configuration...." In finally rejecting of claim 1, the Final Office Action appears to ignore the requirements in claim 1 that the stabilization device maintains the curved configuration when in the collapsed and expanded configurations. Livingston discloses that shell 19 has a different configuration as rod 37 is inserted therein since rod 37 splays the end of shell 19 apart as it is inserted. Even if somehow the collapsed configuration in Livingston is assumed to be a partially expanded configuration where rod 37 is positioned to partially expand shell 19, when rod 37 is further advanced to another expanded configuration then shell 19 has a different curvature. Therefore, Livingston cannot anticipate claim 1.

Pending claims 2, 8-21 and 57-58 depending from claim 1 distinguish Livingston at least for the reasons claim 1 does and for other reasons. For example, rod 37 includes a leading end that is tapered from the cylindrical body of rod 37, but there is no leading end nose that is enlarged relative to rod 37. Therefore, Livingston does not disclose the features recited in claim 12, which recites, among other features, "wherein said inner member includes a leading end nose

with a tapered profile and said leading end nose is enlarged relative to a body portion of said inner member, said body portion extending from said leading end nose to an opposite trailing end of said inner member....” A prima facie case for rejecting claim 12 has not been established and withdrawal of the rejection of claim 12 is respectfully requested.

Claim 57 recites “wherein said stabilization device extends between a leading end and an opposite trailing end and said stabilization device includes: a concave curvature along a side thereof with said concave curvature extending from said leading end to said trailing end; and a convex curvature opposite said side with said convex curvature extending along said stabilization device from said leading end to said trailing end.” Livingston does not disclose these features since when shell 19 is expanded the device includes a concave curvature on opposite sides thereof between the leading end and trailing end, or some combination of linear and concave curvature when not expanded. When viewed in cross-section, the opposite sides of shell 10 are both convex when expanded or not expanded. Therefore, a prima facie case for rejecting claim 57 has not been established and withdrawal of the rejection of claim 57 is respectfully requested.

Claim 58 recites “wherein said stabilization device includes an inner member movably received in an outer member with said inner and outer members extending along said longitudinal axis, wherein said inner member includes a body portion extending between a leading end nose and an opposite trailing end portion, each of said leading end nose and said trailing end portion being enlarged relative to said body portion to engage said outer member in said expanded engagement configuration.” Livingston fails to disclose any structure on the leading of rod 37 that is enlarged relative its portion extending between the leading end and trailing end. Therefore, it cannot anticipate claim 58, and prima facie for rejecting claim 58 has not been established.

Livingston also does not disclose amended claim 25. Rod 37 is linear when shell 19 is collapsed and when shell 19 is enlarged. Claim 25 recites, in combination with the other features therein, “wherein said inner member and said outer member each include said curved configuration and each of said inner member and said outer member forms an arc that is co-linear with said longitudinal axis.” The Final Office Action fails to indicate how rod 37 is considered to include the curved configuration of shell 19 or how rod 37 forms an arc that is co-linear with the longitudinal axis of the device. Thus, a prima facie case for rejecting claim 25 as

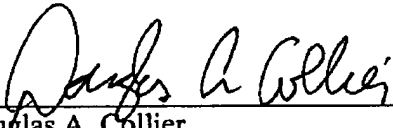
anticipated by Livingston has not been established and withdrawal of the rejection of claim 25 is respectfully requested.

Claims 26-39 and 55-56 depending from claim 25 are also allowable at least for the reasons claim 25 is allowable and for other reasons. For example, amended claim 30 recites "wherein said inner member includes a body portion extending from a leading end nose that is enlarged relative to said body portion and said leading end nose includes a tapered profile...." As discussed above with respect to claim 12, rod 37 in Livingston fails to include this feature. The Final Office Action fails to indicate how it is considered that rod 37 includes a leading end nose that is enlarged relative to its body portion. A review of Livingston does not reveal any disclosure of this feature. Therefore, a prima facie case for rejecting claim 25 has not been established. A prima facie case for rejecting claims 55 and 56 has not been established for the same reasons provided above with respect to claims 57-58.

The other claims depending from claim 25 are believed allowable for the reasons provided in previous responses. Withdrawal of the rejection of claims 26-39 depending from claim 25 is respectfully requested.

Reconsideration of the present application including claims 1-21, 23-39 and 55-58 is respectfully requested. The application is believed in condition for allowance, and a Notice of Allowance is hereby solicited. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted:

By: 
Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
2800 One Indiana Square
Indianapolis, Indiana 46204-2079
Phone: (317) 238-6333

KD_IM-1320649_1

Response to Final Office Action
Ser. No 10/795,880
MSDI-260/PC853.00
Page 4 of 4